



STATE OF NEW JERSEY

In the Matter of Juarez Hill  
City of Newark, Department of  
Neighborhood and Recreational  
Services

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

CSC DKT. NO. 2016-1885  
OAL DKT. NO. CSV 12412-18  
(ON REMAND CSV 03284-16)

ISSUED: FEBRUARY 8, 2019 BW

The appeal of Juarez Hill, Code Enforcement Officer, City of Newark, Department of Neighborhood and Recreational Services, removal effective January 2, 2015, on charges, was heard by Administrative Law Judge Caridad F. Rigo, who rendered her initial decision on December 18, 2018.

Having considered the record and the Administrative Law Judge's initial decisions, and having made an independent evaluation of the record, including viewing the video in this matter at the original meeting of August 1, 2018, as well as reviewing the exceptions and replies filed by the parties to both the original and remand initial decisions, the Civil Service Commission (Commission), at its meeting of February 6, 2019, accepted and adopted the Findings of Fact and Conclusion as contained in the attached Administrative Law Judge's initial decisions.

ORDER

The Civil Service Commission finds that the action of the appointing authority in removing the appellant was justified. The Commission therefore affirms that action and dismisses the appeal of Juarez Hill.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE 6<sup>th</sup> DAY OF FEBRUARY, 2019

*Deirdre' L. Webster Cobb*

Deirdré L. Webster Cobb  
Chairperson  
Civil Service Commission

Inquiries  
and  
Correspondence

Christopher S. Myers  
Director  
Division of Appeals and Regulatory Affairs  
Civil Service Commission  
P. O. Box 312  
Trenton, New Jersey 08625-0312

Attachment



**State of New Jersey**  
OFFICE OF ADMINISTRATIVE LAW

**IN THE MATTER OF JUAREZ HILL,  
CITY OF NEWARK,  
DEPARTMENT OF NEIGHBORHOOD  
AND RECREATIONAL SERVICES.**

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**INITIAL DECISION**

OAL DKT. NO. CSV 12412-18

CSC DKT. NO. # 2016-1885

**ON REMAND**

OAL DKT. NO. CSV 03284-16

CSC DKT. NO. # 2016-1885

**Cynthia H. Hardaway, Esq., for Petitioner**

**John J. Zidziunas, Esq., for Respondent**

Record Closed: August 29, 2018

Decided: December 18, 2018

**BEFORE CARIDAD F. RIGO, ALJ (Ret. on recall)**

**STATEMENT OF THE CASE AND PROCEDURAL HISTORY**

This matter is on remand to the Office of Administrative Law (OAL) from the Civil Service Commission from an Initial Decision by the undersigned where among other things, it was determined, grounded upon findings of credible testimony, that the charges filed against petitioner were true and that respondent's action to remove petitioner from his position should be affirmed. In its remand to the OAL, the Civil Service Commission states, in part, that:

- (1) The ALJ provide further detail as to her reasons for making her findings;

- (2) And, that this ALJ explain why the testimony of Townes, Johnson, and Harris were stricken from the record.

Petitioner was removed from his position of a code enforcement officer for the City of Newark Code Enforcement Department on charges of conduct unbecoming a public employee, misuse of public property, and other sufficient cause. Specifically, respondent City of Newark alleged that while petitioner was serving as a code enforcement officer he stole a Dell Optiplex 9010 computer from the city on December 29, 2014.

This matter was transmitted to the Office of Administrative Law (OAL) on February 29, 2016, for a hearing as a contested case. The matter was heard on August 25, 2016, November 21, 2016, December 28, 2016, January 12, 2017, and February 21, 2018. Both parties had a change of counsel, coupled with this ALJ's retirement, all of which delayed the conclusion of these proceedings.

### **RESPONSE TO THE ISSUES RAISED BY THE CIVIL SERVICE COMMISSION**

In the Initial Decision, the undersigned laid out the pertinent witnesses' testimony in this matter. More specifically, the following witnesses testified as to what they saw on the original video on Khalif Thomas's high definition TV screen in Thomas's office. Below is a further summary of their testimony:

#### **Thomas McDonald**

Thomas McDonald was the liaison of the Code Enforcement Department to the city's Neighborhood Services Department and had been with the city for twenty-eight years.

McDonald testified that in December 2014, no code enforcement officer was told to move anything from the code enforcement office. (T1-p. 18, ll. 21-25).

McDonald furthered that he viewed a surveillance video of December 29, 2014, at 6:01 p.m., and he observed Mr. Hill exiting the City Hall building with a cooler packed

with things. McDonald said that he made his determination that Hill took the computer after reading the reports, having had conversations with the director of the department, and talking with other witnesses in the office and viewing the video. (T1-p. 55, ll. 1-25; p. 56- ll. 1-25; p. 57, l. 1-8.)

**Patrick Council**

The testimony of Patrick Council regarding what he saw on the video, the investigation, and the things he knew were happening with respect to Hill's work history such as attendance, work behavior, no calls/no shows, were all things that he took into consideration when he decided to remove Hill from his position. (T2-p. 12, ll. 12-25; p. 13, ll. 1-25; p. 14. ll. 14-25; p. 15, ll. 1-6.)

Council's testimony was that the computer was in the office during the day of December 29, 2014; on December 30, 2014, the computer was missing; and that Hill was seen on the video surveillance tape leaving City Hall carrying a cooler filled with stuff. Council furthered that he saw computer wiring that was hanging out of the cooler and that Hill was trying to re-situate and push down and cover (redress) into the cooler items that were on top of the cooler. (T2-p. 51, ll. 10-25; p. 52, ll. 1-25; p. 53, ll. 1-25.)

**Khalif Thomas**

Khalif Thomas is the person in charge of the City of Newark's buildings. He is responsible for security, general maintenance, the HAVC, electrical, plumbing, surveillance video and the security systems for all city buildings.

Thomas testified that he viewed the original surveillance video recording of the December 29, 2014, of the Green Street exit/entrance of City of Hall. He said that when he first saw the video he was in his office with Thomas McDonald and the two of them watched the video together. He said that they both identified a computer in the cooler. Then after he and McDonald watched the video Detective Wohltman came into his office asked him about the video then he again saw the video and again identified a computer in the cooler. (T3-pp. 107, 108, and 109.)

Thomas explained that the laptop that showed the surveillance video at the OAL hearing was not high definition and did not have the ability to zoom like the video player in his office. (T3-p. 106, ll. 1-21.)

Thomas further testified that he put the original video on a flash drive and gave the flash drive to Detective Wohltman after they both looked at the original on his high definition equipment. He said that in order to make sure the copying was correct he and Detective Wohltman again looked at the video from the flash drive and made sure after zooming in that they saw a computer in the cooler. In other words, what they (McDonald, Wohltman, and Thomas) saw on the original surveillance video was what they saw on the flash drive. (T3-pp. 107, 108, and 109.)

### **Louis Wohltman**

Louis Wohltman was the City of Newark's police officer that was in charge of investigating the whereabouts of a code enforcement department computer. He testified in various ways that he saw a computer in Hill's cooler on December 29, 2014. When described what he saw inside the cooler he did so by zooming in on the cooler. He said he looked at the original surveillance video on Thomas's flat-screen 30-inch TV.

He identified the computer by describing it. He saw the side of a computer that had a handle on the side. He further stated that he recognized the computer as a city-issued computer because he had one as well. (T3-pp. 132, 134, and 135.)

### **CONCLUSIONS AS TO CREDIBILITY**

There's no reason why Thomas, McDonald, and Wohltman should not be believed when they testified that they saw the side of a computer in the cooler that Hill was pushing as he left City Hall on December 29, 2014. They all looked at the original footage of the surveillance video tape and testified as to what they saw in that original video. They had no motive to be untruthful. Their credibility was never attacked.

In an Administrative Law proceeding it is only necessary to establish the truth of the charges by a preponderance of the believable evidence. Atkinson v. Parsekian, 37 N.J. 143, 149 (1962); See generally 37 N.J. Practice (Lefelt, Administrative law and Practice) (1 ed. 1988) § 217 at 235. This standard of proof requires a civil litigant to "establish that a desired inference is more probable than not. If the evidence is in equipoise, the burden has not been met." Biunno, N.J. Rules of Evidence, Comment 5 on N.J.R.E. 101(1). The evidence need not have the "quality of certainty" to satisfy this burden of proof, but it must be a presumption grounded in reason and logic; mere guess or conjecture cannot be substituted for legal proof. The burden of persuasion is not sustained unless the evidence demonstrates the offered hypothesis as a rational inference, that is to say a presumption grounded in a preponderance of the probabilities according to the common experience of mankind. The accepted standard of persuasion for the triers of the facts is that the determination be probably founded in truth. The evidence must be such in quality as to lead a reasonably cautious mind to the given conclusion. The measure of the weight of the evidence is "the feeling of probability which [it] engenders." Bornstein v. Metro. Bottling Co., 26 N.J. 263 (1958) (citing Wigmore on Evidence (3d ed.) § 2498); see Sivak v. City of New Brunswick, 122 N.J.L. 197 (E. & A. 1939).

A review of their testimony makes it clear that the charges of conduct unbecoming a public employee, misuse of public property, and other sufficient cause are sustained by a preponderance of the credible evidence.

#### **Exclusion of the Testimony of Harris, Townes, and Johnson**

The testimonies of Harris, Townes, and Johnson, witnesses for the City, were not recited in the Initial Decision due to petitioner's motion to exclude their testimony on the basis that these witnesses were not disclosed to petitioner during the discovery period. And, that the City had not provided petitioner with copies of the witnesses' prior video and/or written statements. Although this tribunal heard the testimony of these witnesses because petitioner's counsel made her objections after those witnesses testified, such testimony was disregarded and carried no weight in the in the Initial Decision.

N.J.A.C. 1:1-14.14, permits the imposition of such a sanction against the City because of the City's unreasonable failure to comply with the discovery requirements. The failure of petitioner to get those witnesses' prior statements prejudiced petitioner because petitioner did not have all of the tools necessary to conduct an effective cross-examination.

I **CONCLUDE** Hill's conduct was unbecoming of a public employee and that he failed to uphold the high standards of being a public employee. I further **CONCLUDE** that his termination was appropriate.

### **ORDER**

Based on all of the above findings it is hereby **ORDERED** that petitioner's removal as a Code Enforcement Officer, for the City of Newark, Department of Neighborhood and Recreational Services effective January 2, 2015, is hereby **AFFIRMED**.


I hereby **FILE** my Initial Decision with the **CIVIL SERVICE COMMISSION** for consideration.

This recommended decision may be adopted, modified or rejected by the **CIVIL SERVICE COMMISSION**, which by law is authorized to make a final decision in this matter. If the Civil Service Commission does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.



Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **DIRECTOR, DIVISION OF APPEALS AND REGULATORY AFFAIRS, UNIT H, CIVIL SERVICE COMMISSION, 44 South Clinton Avenue, P.O. Box 312, Trenton, New Jersey 08625-0312**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

December 18, 2018  
DATE

  
CARIDAD F. RIGO, ALJ (Ret., on recall)

Date Received at Agency: December 18, 2018

Date Mailed to Parties: December 19, 2018  
lr



that date depicted the appellant pushing a cooler containing the city-owned computer and leaving the city-owned building. The ALJ also found that the testimony of the appointing authority's three witnesses "hung together and their respective pieces fit together." The ALJ further found inconsistencies in the appellant's and his witness' testimony and determined them to be not credible. Accordingly, the ALJ upheld the charges against the appellant. With regard to the issue of the penalty, the ALJ noted that, despite having no prior disciplinary history, removal was warranted due to the severity of the appellant's misconduct.

In his exceptions, the appellant argues that the ALJ improperly summarized the testimony of the appointing authority's three witnesses. The appellant also complains that the ALJ's initial decision improperly referred to irrelevant testimony from one of the appointing authority's witnesses concerning the appellant's work ethic and alleged absenteeism. Furthermore, the appellant argues that his testimony and his witness' testimony were credible. Finally, the appellant asserts that the appointing authority failed to prove that he stole a city-owned computer. The appellant maintains that he removed a personal computer from the city-owned property.

In its reply, among other things, the appointing authority indicates that the testimony of Dorothy Townes, Alwanda Johnson and Marcia Harris was stricken from the record.<sup>1</sup>

Upon its *de novo* review of the record, the Commission finds it necessary to remand this matter to the OAL. Initially, the Commission notes that its review of the video was unavailing as to whether the contents of the cooler the appellant was pushing contained a computer. Thus, the Commission requests the ALJ to further detail her reasons, based on the witnesses' testimony and her credibility determinations, her finding to that effect. Additionally, the Commission requests that the ALJ explain why the testimony of Townes, Johnson and Harris was stricken from the record, and absent a compelling reason for excluding their testimony, the ALJ shall summarize their testimony. If necessary, the Commission further requests that the ALJ address how the stricken testimony affects her credibility determinations or her ultimate findings. Therefore, the Commission remands the matter to the OAL for the reasons herein explained.

## ORDER

The Commission orders that this matter be remanded to the Office of Administrative Law for further proceedings as set forth above.

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<sup>1</sup> The record indicates that this testimony was stricken by order of the ALJ. As no written order could be located, it is assumed that the order was verbal.

**DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE 1<sup>st</sup> DAY OF AUGUST, 2018**

*Deirdre' L. Webster Cobb*

**Deirdré L. Webster Cobb  
Chairperson  
Civil Service Commission**

**Inquiries  
and  
Correspondence**

**Christopher Myers  
Director  
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**State of New Jersey**  
OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

OAL DKT. NO. CSV 03284-16

CSC DKT. NO. # 2016-1885

IN THE MATTER OF JUAREZ HILL,  
CITY OF NEWARK,  
DEPARTMENT OF NEIGHBORHOOD  
AND RECREATIONAL SERVICES.

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Cynthia H. Hardaway, Esq., for petitioner

John J. Zidziunas, Esq., for respondent

Record Closed: April 24, 2018

Decided: June 15, 2018

BEFORE CARIDAD F. RIGO, ALJ (Ret. on recall)

**STATEMENT OF THE CASE AND PROCEDURAL HISTORY**

Petitioner Juarez Hill appeals his termination from the position of a code enforcement officer for the City of Newark Code Enforcement Department on charges of conduct unbecoming a public employee, misuse of public property, and other sufficient cause. Specifically, the respondent City of Newark alleges that while petitioner was serving as a code enforcement officer he stole a Dell Optiplex 9010 computer from the city on December 29, 2014.

The matter was transmitted to the Office of Administrative Law (OAL) on February 29, 2016, for a hearing as a contested case. The matter was heard on August 25, 2016, November 21, 2016, December 28, 2016, January 12, 2017, and February 21, 2018. Both parties had a change of counsel, coupled with this ALJ's retirement, which delayed the conclusion of these proceedings.

### ISSUES

Did petitioner take the Optiplex 9010 computer on December 29, 2014? Was petitioner's removal appropriate?

### FACTUAL DISCUSSION

#### Thomas McDonald

#### Testified on behalf of City

Thomas McDonald at the time of his testimony was the liaison of the Code Enforcement Department to the city's Neighborhood Services Department, he had been with the city for twenty-eight years. He oversaw fourteen subordinates in the department. The department of Code Enforcement enforced city ordinances with respect to housing, sanitation, zoning ordinances, streets, sidewalks, public and building safety. The department has access to confidential information such as driver's licenses, business licenses, and other pertinent information for property owners and/or business owners, this information is stored in the department's offices and in their computers.

McDonald was petitioner's supervisor from 2003 until petitioner's termination. He said petitioner started out as an intern employed by the City on a temporary basis. According to McDonald petitioner in the first few years was extremely competent, efficient, and dedicated to the department. He said petitioner was very good with IT issues and the electronics they used. Petitioner worked his way into becoming a code enforcement officer in 2007. He knew petitioner personally. He observed petitioner to be "out of it" also known as "high" during petitioner's tenure. He said he told all three

directors about petitioner's behavior. McDonald furthered that in late 2014, petitioner's behavior got "pretty bad." McDonald referred to Exhibit R-1, the department's attendance log, showing petitioner's absences.

McDonald furthered that inspectors/code enforcement officers were assigned desktop computers. The inspectors were assigned passwords issued by the city but individuals could log into another computer if necessary. McDonald testified that the code enforcement officers used department computers because those computers contained information regarding violations or other issues that were pertinent to the city's codes and regulations. He furthered that the inspectors were assigned computers and each inspector was responsible for his/her individual computer. Hill had been assigned a computer sometime between 2013-2014. However, there came a time when Hill did not have a computer on his desk, but he was not the only officer that did not have a computer on his/her desk. The officers did not always need a computer to do their work.

Hill often brought in his own laptop to do his work. Some city computers had multiple users.

Code enforcement offices were located in City Hall Broad Street, Room 420, Newark, New Jersey. The inspectors all shared one large office. The Code Enforcement department was relocated on or about March 3, 2015, to Mt. Prospect Street, Newark. However, McDonald said that he did not authorize anyone to move equipment or anything from the City Hall offices on December 29, 2014, because they did not have access or authority to move anything into the new location. The new location was still under construction on December 29, 2014.

He furthered that the entry door to the Code Enforcement office was locked and the entire staff, clerical support, and officers were provided with keys.

McDonald stated that he learned that petitioner was terminated because he was accused of stealing a computer from the Code Enforcement Department. McDonald said that he learned of it from Marsha Harris, who was acting as a supervisor while he

was away. He said Harris asked him if he had moved a computer because one was missing. He said he told her no and that he had not been in the office and would not be returning until after the new year. He told Harris to report the matter to the director.

McDonald furthered that the matter was referred to the Inspector General's Office and an investigation ensued. After the investigation was completed he was given the reports, Exhibits R-2, R-3, R-4, and the video tape R-6.

On cross-examination McDonald stated that petitioner was assigned a computer between 2013 and 2014. However, McDonald furthered that although every officer had a desktop computer on his/her desk not every officer, at all times, had a computer. And, at the time that petitioner is alleged to have stolen a computer petitioner did not have a desktop computer assigned to him. There were times petitioner had his own personal laptop that he would bring into the office and he would hook it up into the city system. Every computer that is issued by the city any employee in the city has access to those computers using their own password.

The actual computer that went missing was assigned to Inspector Dorothy Townes. And it was Townes who actually reported the computer missing from the desk.

The department employees were told that the department was going to be moved to a new location outside of City Hall sometime in November 2014.

McDonald stated that some employees came to work on vacation days or on their days off but petitioner was not one of them.

McDonald said he viewed the video and observed petitioner exiting City Hall building on the Green St., employee exit door. The video is dated December 29, 2014, at 6:01:22 p.m. McDonald stated that petitioner was supposed to be on vacation on that day.



Patrick Council

Testified on behalf of City

Patrick Council is employed by the City of Newark and is the Director of Neighborhood and Recreational Services. He oversaw five departments such as park and grounds, code enforcement, and city recreation. He is the enforcer of policies and discipline. Thomas McDonald reported to him and McDonald was the manager of the Code Enforcement Department. He met petitioner when he became the director of the code enforcement department.

He found out about the missing computer when McDonald told him about it. McDonald had already referred the matter for investigation to the inspector general's office. When the investigation was completed the inspector general's office recommended that charges be filed against the petitioner. Council furthered that internal hearings occurred and he did not testify at that hearing. Council said he was told that the hearing officer recommended to uphold the charges.

Council testified that after he received the inspector general's report, the hearing officer's recommendation, and a review of petitioner's work attendance and work behavior, a conglomerate of things that added up. He decided to terminate petitioner's employment with the City of Newark. Council said that petitioner was not prohibited from accessing the building on his day off.

Council testified that although the issue of the theft was "still pending" it did not stop him with terminating petitioner. Council furthered that based on the reports of the investigation and his view of the video he determined that petitioner took the computer.

Under cross-examination Council testified that he in fact signed off on the final notice of disciplinary action, which resulted in petitioner's removal from the City of Newark's employment. Council acknowledged that none of petitioner's alleged work deficiencies and other factors that he took into consideration when deciding to terminate

petitioner were ever formally addressed in a hearing, oral or written warnings. Petitioner was never provided with progressive discipline.

Council testified that petitioner was fired based on the fact that he was identified as having stolen a computer.

Council stated that when he viewed the video he saw petitioner moving a wheeled ice cooler out of City Hall. He saw computer wiring hanging out of the cooler. He saw petitioner situating things in the cooler and pushing things down into the cooler.

### Khalif Thomas

#### Testified on behalf of City

Khalif Thomas is the manager of Newark's public buildings and has been so for about three years. He oversees sixty-two buildings. He is responsible for armed security, general maintenance, the HAVC, electrical, plumbing, and the security systems for all city buildings.

Thomas explained that Newark has its own thirty-two channel DVR which sees all exit doors around City Hall; inside as well as the side buildings; and the system is backed up to the city's data network in his office. The system records for fifteen days. After fifteen days they erase and start back re-recording.

Thomas furthered that supervisor, McDonald, came to him asking if they could go over the video and see if a computer was taken out of City Hall. Thomas furthered that they went to the DVR in his office and reviewed the video of every camera in the building. As he watched the video of the 31 Green St. entrance/exit he saw petitioner coming in and leaving the building. The date of the video was December 29, 2014, at 18:01 hours. The video records everyone entering and leaving the building at Green St. Thomas testified that the camera system is High Definition (HD). He said when a request is made for a specific video he gives them fifteen minutes after and fifteen minutes before the time requested. He testified that his procedure is to put the portion

of the video requested on a flash drive and gives that flash drive to the person that made the request, this is what he did in this case.

City Hall is open to all employees 24/7. He furthered that only Code Enforcement and personnel and himself have access to the code enforcement offices, the offices where the subject computer was.

Thomas testified that as he looked at the video he saw that it was petitioner. And, when he zoomed in on the cooler he saw the side of a computer in the cooler. On the stand at the hearing as he viewed the scene from the flash drive he again identified the petitioner and the side of a computer in the cooler. He said he first saw this when he and Mr. McDonald looked at the video in his office.

Under cross-examination Thomas said that McDonald specifically asked for Juarez Hill on a specific date and time. Thomas stated that City Hall has six exit/entrance doors and that after 4:00 p.m. there is only one exit/entrance open and that is on Green Street. He furthered that at the time that he reviewed the tape in his office he said he saw the side of a computer. He said on the tape he could zoom in on the cooler. He said that the video tape was clearer than the flash drive.

The original tape with the original footage no longer exists. He copied the original footage on to a CD then onto flash drive. He testified that he had to zoom in onto the cooler in order to see the computer in the cooler.

**Det. Lt. Louis Wohltman**

**Testified on behalf of the City**

Detective Lieutenant Louis Wohltman is employed by the City of Newark Police Department assigned to the special investigations unit that investigates city employees. He is a twenty-four-year veteran of the city. He investigates employees and vendors that do business with the city. He also investigates referrals that he receives from

department managers or anonymous employees. If the matter is of a criminal nature he refers the matter to the Inspector General's Office.

This matter came to his attention when Thomas McDonald told him about the computer being missing from the Code Enforcement office and he thought a computer was taken some time between December 29 and 30. McDonald told him that Juarez Hill was in the office on that day and that Hill should not have been there. Wohltman then testified that he went to Khalif Thomas and looked at the videos in his office.

Wohltman testified that he saw the video on Thomas' flat screen TV. He said he saw Hill leaving City Hall from the Green St. entrance wheeling a big cooler down three steps. He furthered that he saw Hill lift the cooler over the steps. He testified that he saw a computer in the cooler especially because he was able to zoom in on the cooler. He said he knew it was a city computer because city computers are unique to the city. The city computers have the monitor and tower attached and they have a carrying handle attached to it. He said it was the attached metal handle that identified it to him as a city computer. There was a bag sitting on top of the computer but he could still see what was under the bag.

Wohltman said he zoomed in on the screen on DVR in Thomas' office and that he was able to identify the computer as a City of Newark computer. He also said that those computers can be used at home. He was familiar with what that computer looked like because he uses one like that every day. He got his computer in the summer of 2014.

Wohltman furthered that he did not have enough to prosecute petitioner criminally because he had no eye witnesses. He said he never spoke to the petitioner.

Under cross-examination Wohltman said he could not find an eye witness. He said he made his determination based on what he saw was in the cooler and that the computer he saw belonged to the City of Newark. He described the silver handle that is unique to the city. He did not see the monitor but he saw the tower that is black. He

noted that the lid to the cooler was open because the computer was standing up straight.

**Arlene Chambers**

Testified on behalf of petitioner

Arlene Chambers is employed by the City of Newark for twenty-one years as a code enforcement officer. Chambers knew petitioner as they were co-workers, she worked the heating schedule in January and her hours were 1:00 p.m. to 9:00 p.m.

Chambers stated that December 29, 2014, was a Friday and that she worked the heating schedule. Chambers was certain that December 29, 2014, was a Friday because she took the following Monday off and returned to work on the following Tuesday.

Chambers testified that petitioner came into the office that afternoon and she told him that while he was there he was to pack up his stuff because on Monday they were moving. She said that petitioner did not have a city computer so he brought his own computer. Chambers furthered that she saw petitioner pack up all of his stuff and leave the office. She furthered that about a half-hour later she left the office, went downstairs, and she saw petitioner talking to the security guard and then he left. Chambers stated that petitioner never had a city computer on his desk. Chambers furthered that some months prior to December 29, 2014, when petitioner returned from vacation he discovered that his computer was gone. She recalled that petitioner asked other co-workers about his computer but no one knew what happened to his computer. She said petitioner always had his cooler by his desk. She said after that petitioner used his personal computer/laptop.

Chambers stated that when she returned to work after that Friday, December 29, 2014, she took off the following Monday and returned to work that next Tuesday and she reported to the new location on Mount Prospect street and not to City Hall.

Chambers said that on all city issued computers the towers were on the floor and the monitors were on the desk.

She said no one asked her anything about this investigation.

Under cross-examination Chambers testified that her schedule of working 1:00 p.m. to 9:00 p.m. started in January of 2015, and that was the time she saw petitioner in the office and it was at that time that she told petitioner to pack his stuff because on the following Monday the department was moving to Mount Prospect Ave. Chambers furthered that it was that next Tuesday, when she returned to work, that she heard about the missing computer. And, that she reported to work on that Tuesday to the Mount Prospect Avenue work site.

Chambers also testified that on December 29, 2014, she left the office about 6:30 p.m. or so and went downstairs and saw petitioner talking to the guard he was about to leave out the door carrying his stuff.

Chambers said that she was the only one that was physically present in the office with petitioner when he was packing and moving his stuff on the day that he allegedly took the computer. She also said that she never told anyone that she was there and knew that petitioner did not take a computer. She did not say anything because no one asked her.

Under re-direct Chambers testified that when she returned to work on Tuesday she saw petitioner and she saw him at the City Hall offices. Chambers also furthered that petitioner would gather his stuff just about every day and leave the City Hall offices and sometimes he would take his cooler.

### Juarez Hill

Juarez Hill is the petitioner and he testified on his own behalf. Hill stated he started working for the City of Newark in 2001 as a code enforcement officer. Petitioner's job required him to protect and enforce the City's interests and ordinances

pertaining to housing, zoning ordinances, building safety, and sanitation. As a code enforcement officer, he had 24-hour access to the City Hall building and his offices.

Hill stated that on December 29, 2014, a Monday he was on vacation but went to his job offices located in City Hall to do some paperwork on his laptop. While he was there Arlene Chambers told him that he should pack his things because they were moving the office to the new location. He had a refrigerator, microwave, a Nutri-bullet, laptop, printer, monitor, a shredder, books and photos at the office; these were all his personal property. Hill furthered that he took it upon himself to bring them into the office so he could do his city work. He testified that he only packed his personal things and denied taking anything that belonged to the city.

Hill said that on December 29 he went into City Hall twice. The first time he came in and saw Chambers he was told to remove his personal belongings, which he did. However, he realized he forgot some paperwork so he returned got those and then left again. The next time he returned to City Hall was on January 2, 2015.

When questioned as to why he returned to the City Hall and not the new location Hill responded that he had not packed all of his things that he had only taken some of his belongings home on December 29, 2014. He said he had massive stuff in his office; that he had a whole apartment in his area of the office. He testified that his moving from City Hall to the Mt. Prospect Avenue office was a process.

Hill said that at one time he had a city computer assigned to him but he was out on a medical leave and when he returned his computer was missing and he later found out that his computer was given to someone else. He never received another computer so he did his work on his own personal computer and equipment that he brought into the office.

During cross-examination petitioner acknowledged that he was visible on the video of the Green St., entrance/exit of the City Hall building. Petitioner explained that the cooler was a mid-size cooler, less than 2-feet wide and 2-feet deep. It was on wheels and had a handle so he could pull/push it similar to a suitcase with wheels. He

stated that he stacked up the items in the cooler to the point that he could not close the cooler's lid. He stated that the cooler was heavy because the bag he had on top of the open cooler was heavy with his stuff.

### Summary of Video

There are two views of the surveillance video of the passage way of the Green St. entrance/exit of City Hall. One view shows petitioner walking towards the camera as he walks towards the exit doors. The video shows petitioner pushing a blue cooler by its handle down a hallway. The cooler lid is open. The cooler is packed with items and has a black bag/backpack sitting on top of the items. It is apparent that the cooler is heavy because petitioner is seen lifting the cooler with both hands trying to manage a few steps. Petitioner is also seen trying to steady with both hands the black bag/backpack so it does not fall off the cooler. The black bag/backpack sitting on top of the open cooler obstructed the ability to see an item in its complete form. However, one can definitely see a flat silver metal plate or board that can be described as the side of a computer. There was something large protruding from the cooler and it was evident that the black bag/backpack was blocking a full view of the contents of the cooler.

The second view of the video shows the same passage way but from the opposite angle, in this video the petitioner is walking away from the camera pushing the cooler.

### FINDINGS OF FACT

The central issue to be determined is did petitioner commit an act of theft of a City of Newark computer on December 29, 2014.

Having listened to the testimonies of all of the witnesses and having viewed the surveillance video, Exhibit R-6, and the other documentary evidence, I **FIND** the following:



I **FIND** It is more reasonable than not that petitioner knowingly and willfully committed an act of misconduct when he utilized his position and access to city property to facilitate a theft of a Dell Optiplex 9010 computer from the city's Code Enforcement Department offices on December 29, 2014, at approximately 6:00 p.m. I make this finding because of the credible testimony of Khalif Thomas, who oversaw the City of Newark's building security and the security surveillance DVR systems that monitored all doors around City Hall. Mr. Thomas identified the petitioner pushing a cooler and he saw the side of an Optiplex 9010 city computer inside the cooler. Thomas testified that he zoomed in on the video and saw the computer.

I **FIND** the testimony of Detective Louis Wohltman, a detective in the City's Special Investigations Unit credible and persuasive. Wohltman's testimony made sense in view of what he saw in the video. Det. Wohltman, like Mr. Thomas, was able to zoom in on the cooler on a flat 30-inch flat screen HD-TV. Wohltman noted that he could not see more of the computer in the cooler because it had a black bag on top of it. Wohltman said the computer model that was missing was the same model he was currently using.

I **FIND** the testimony of Arlene Chambers incredible. She was adamant that the day in question was a Friday when in fact it was a Monday. Chambers said she told petitioner to pack because the office was moving on Monday when in fact the office moved on March 5, 2015. Also, the fact is that no manager or department head told her to tell anyone to move their personal belongings. Ms. Chambers had many inconsistencies with respect to her own work schedule especially as to where she was working, the times she worked and the days and months she worked. And, according to Chambers she knew petitioner had not stolen the computer because she allegedly saw him pack his personal things on December 29, 2014, yet at no time prior to the instant hearing did she relay what she saw petitioner do to anyone at City Hall. I **FIND** it incredible that Ms. Chambers told petitioner to pack up his things because the office was going to move to Mt. Prospect Avenue over the weekend. What weekend was Chambers referring to? Her testimony was not coherent.

I **FIND** the testimony of Juarez Hill incredible. I **FIND** it incredible that Hill went into the office on his vacation day during Christmas week and that he went there to do work after normal working hours. Of significance is the fact that December 29, 2014, was a Monday. Hill testified that it was a Monday and he testified that that after that Monday he returned to work on January 2, 2015, that was a Friday. Chambers and Hill's account of what happened on December 29, 2014 are not in sync. And, by Hill's own account, the next time he reported to work, he went to City Hall not Mt. Prospect Avenue, unlike Chambers' account that they reported to Mt. Prospect Avenue, allegedly on that following Tuesday.

The testimony of McDonald, Thomas, and Wohlman hung together and their respective pieces fit together.

### LEGAL DISCUSSION AND CONCLUSION

In an appeal such as this from a disciplinary action or ruling by an appointing authority, the burden of proof is on the appointing authority to show that the action taken was justified. N.J.S.A. 11A:2.21; N.J.A.C. 4A:2-1.4(a). The burden is to establish by a preponderance of the competent, relevant and credible evidence that the employee is guilty as charged. Atkinson v. Parsekian, 37 N.J. 143 (1962). Precisely what is needed to satisfy the standard must be decided on a case-by-case basis. The evidence must be such as to lead a reasonably cautious mind to the given conclusion. Bornstein v. Metro. Bottling Co., 26 N.J. 263 (1958). Preponderance may also be described as the greater weight of credible evidence in the case, not necessarily dependent on the number of witnesses, but having the greater convincing power. State v. Lewis, 67 N.J. 47(1975).

Credibility is the value a fact finder assigns to the testimony of a witness, and it incorporates the overall assessment of the witness's story, in light of its rationality, consistency, and how it comports with other evidence. Carbo v. United States, 314 F.2d 718 (9th Cir. 1963). A fact finder is expected to base decisions on credibility on his or her common sense, intuition or experience. Barnes v. United States, 412 U.S. 837

(1973). Credible testimony must not only proceed from the mouth of credible witnesses but must be credible in itself. Spagnuolo v. Bonnet, 16 N.J. 546 (1954).

In proceedings before an Administrative Law Judge, it is only necessary to establish the truth of the charges by a preponderance of the believable evidence. In re Polk, 90 N.J. 550, 560 (1982). Preponderance of the evidence is the minimum standard of proof required in administrative proceedings. This standard of proof requires a litigant in this venue to establish that a desired inference is more probable than not.

Hill was charged with "conduct unbecoming a public employee" which is an elastic phrase that encompasses conduct that adversely affects the morale or efficiency of a governmental unit or that has a tendency to destroy public respect in the delivery of governmental services. Karins v. City of Atlantic City, 152 N.J. 532, 554 (1998); see also In re Emmons 63 N.J. Super., 136, 140(App. Div. 1960). It is sufficient that the complained of conduct and its attending circumstance "be such as to offend publicly accepted standards of decency." Karins, 152 N.J. at 155 (quoting In re Zeber, 156 A.2d 821 (1959). Such misconduct need not necessarily "be predicated upon the violation of any particular rule or regulation, but may be based merely upon the violation of the implicit standard of good behavior which devolves upon one who stands in the public eye as an upholder of that which is morally and legally correct." Hartmann v. Police Dep't of Ridgewood, 258 N.J. Super., 32, 40 (App. Div. 1992) (quoting Asbury Park v. Dep't of Civil Service, 17 N.J. 429 (1955).

In a civil service disciplinary action the penalty should be determined based on the charges and the proofs presented during the hearing. A fact finder must also determine if there are mitigating circumstances which should impact the charges and penalty. Mitigating circumstances must be taken into consideration when determining whether there is just cause for the penalty imposed. A misappropriation of the property of another is a complete disregard of basic property rights that show a lack of an ethical standard.

I **CONCLUDE** Hill's conduct was unbecoming of a public employee. I ~~CONCLUDE that Hill failed to uphold the high standards of being a public employee.~~

Hill's actions showed a complete disregard of the City's and the general public's property rights.

Therefore, for the reasons set forth herein, I **CONCLUDE** that the City of Newark was correct in terminating Juarez Hill as an employee. The City's decision is supported by the preponderance of the credible evidence and should be affirmed.

### PENALTY

When dealing with the issue of penalty at an Office of Administrative Law hearing such as this what penalty should be imposed is determined on a case by case basis. A key factor in determining the severity of the penalty depends on the facts and circumstances of the conduct complained of and the employee's disciplinary history. W. New York v. Bock, 38 N.J. 500 (1962). Removal, suspension or a fine of no more than six months and disciplinary demotion are considered major discipline. N.J.S.A. 11A:2-6(a)-20; N.J.A.C. 4A:2-2.2-2.4.

In this case Hill has no disciplinary history. However, the severity of his misconduct in this matter cannot be disregarded or mitigated simply because this was his first misconduct. To reduce the penalty in any way would send the wrong message to the public and to the other city employees.

I have taken into consideration Hill's claim that he should be reinstated in his position with the City of Newark and be reimbursed for his lost wages and benefits. However, having **FOUND** the above-stated misconduct, I have no choice but to agree with the City of Newark's removal of Juarez Hill from employment.

Accordingly, I **CONCLUDE** that respondent's termination is appropriate.

### ORDER

Based on all of the above findings it is hereby **ORDERED** that petitioner's removal as a Code Enforcement Officer, for the City of Newark, Department of

Neighborhood and Recreational Services effective January 2, 2015, is hereby **AFFIRMED**.

I hereby **FILE** my Initial Decision with the **CIVIL SERVICE COMMISSION** for consideration.

This recommended decision may be adopted, modified or rejected by the **CIVIL SERVICE COMMISSION**, which by law is authorized to make a final decision in this matter. If the Civil Service Commission does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **DIRECTOR, DIVISION OF APPEALS AND REGULATORY AFFAIRS, UNIT H, CIVIL SERVICE COMMISSION, 44 South Clinton Avenue, P.O. Box 312, Trenton, New Jersey 08625-0312**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

June 15, 2018  
DATE

  
CARIDAD F. RIGO, ALJ (Ret., on recall)

Date Received at Agency: June 15, 2018

Date Mailed to Parties: \_\_\_\_\_

lr

APPENDIX

WITNESSES

For petitioner:

Juarez Hill  
Arlene Chambers

For respondent

Patrick Council  
Thomas McDonald  
Khalif Thomas  
Det. Lt. Louis Wohltman

EXHIBITS

For petitioner:

- P-1 Preliminary Notice of Disciplinary Action
- P-2 Final Notice of Disciplinary Action
- P-3 Letter of Termination dated 1/2/15
- P-4 Letter dated 1/5/15 re: immediate suspension
- P-6 Picture of Optiplex 780 computer
- P-7 thru P-11 Photos of personal items placed in cooler
- P-13 Photo of 9010 computer monitor
- P-14 Photo of 9010 computer tower

For respondent:

- R-1 Department sign-in sheet
- R-2 Police Department report
- R-3 Newark Police Report
- R-4 Photos
- R-5 Electronic time sheets for Code Enforcement Dept.
- R-6 Video of Green Street exit/entrance on 12/29/14 approximately 6:00 p.m.

R-5 Electronic time sheets for Code Enforcement Dept.

R-6 Video of Green Street exit/entrance on 12/29/14 approximately 6:00 p.m.